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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Mar 04, 2022

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

PIERRE BUSTANOBY, an
individual; and JENNIFER
HOPKINS, an individual,

Plaintiffs,

v.

PRESERVER TRANS, LLC, a
foreign corporation; REHMAN
HAYAT and JANE DOE HAYAT,
individually and on behalf of the
marital community comprised
thereof; and JOHN and JANE DOES
1-25,

Defendants.

NO: 2:20-CV-200-RMP

ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFFS'
MOTION TO ENFORCE
JUDGMENT AND ISSUE
SANCTIONS

BEFORE THE COURT, without oral argument, is a Motion to Enforce
Judgment and Issue Sanctions by Plaintiffs Pierre Bustanoby and Jennifer Hopkins,
ECF No. 22. Having reviewed the motion, responsive filings, the record, and
relevant law, the Court is fully informed.

ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS'
MOTION TO ENFORCE JUDGMENT AND ISSUE SANCTIONS ~ 1

I. BACKGROUND

2 On June 1, 2020, Plaintiffs filed their complaint in this Court, alleging
3 negligence against Defendants Preserver Trans, LLC (“Preserver”) and Rehman
4 Hayat based on a car collision involving Mr. Bustanoby and Mr. Hayat. ECF No. 1.
5 Mr. Hayat was working as a licensed commercial tractor-trailer driver for Preserver
6 at the time of the collision. *Id.* Following a mediation in July 2021, the parties
7 executed a settlement agreement and notified the Court that the parties “expect to
8 file a dismissal in this matter shortly.” ECF No. 17. The settlement agreement
9 required defense counsel to “provide prospective release documents to plaintiffs’
10 counsel on or before Friday, July 23, 2021.” ECF No. 22-2 at 15. Plaintiffs’
11 counsel submits that he inquired about the prospective release on July 26 and July
12 28, 2021, but he did not receive the release until the evening of July 29, 2021, six
13 days later than agreed upon. ECF No. 22-1 at 2.

14 Plaintiffs returned the release on Friday, June 30, 2021, with multiple
15 proposed modifications, which Defendants accepted on August 4, 2021. ECF Nos.
16 22-1 at 2, 24 at 2–3. The release stated that Defendants’ insurer would pay Pierre
17 Bustanoby \$689,279.05 and pay Jennifer Hopkins \$50,000.00, for a total of
18 \$739,279.05.¹ ECF No. 22-2 at 20. Defendants’ insurer would make the agreed

²⁰ ²¹ ¹ Plaintiffs' counsel correctly calculated the settlement amount owed to Plaintiffs in an email to Defense counsel sent on September 14, 2021. *See* ECF No. 22-2 at

1 upon payments “on or before three weeks have elapsed after release documents are
2 executed by the parties.” *Id.* at 15. Plaintiff executed the release agreement on
3 August 7, 2021. ECF Nos. 22-2 at 24, 24-1 at 25. Per the terms of the settlement
4 agreement, which was incorporated by reference in the later release, Defendants’
5 insurer was required to make the \$739,279.05 payment by August 28, 2021. ECF
6 Nos. 22-2 at 15; *see also id.* at 24 (integrating the prior settlement agreement into the
7 release).

8 The parties filed a settlement status report with the Court on August 13, 2021.
9 ECF No. 17. On September 2, 2021, the Court entered a text order directing the
10 parties to file either a status report or dismissal documents by September 7, 2021.
11 When that deadline passed without any documents being filed, the Court ordered the
12 parties to file either a settlement status report or dismissal documents by September
13 13, 2021. ECF No. 18 at 2. The parties complied and filed a stipulated motion to
14

15 56. In the instant motion, Plaintiffs’ counsel incorrectly states that “Defendants’
16 Insurer was required to pay \$742,841.48 to the Plaintiffs, consisting of a payment
17 of \$692,841.48 to Mr. Bustanoby and \$50,000 to Jennifer Hopkins.” ECF No. 22-
18 1 at 4 (citing ECF Nos. 22-2 at 13, 20). However, the release agreement that
19 Plaintiffs cite for support states that Mr. Bustanoby was owed \$689,279.05,
20 approximately \$3,500.00 less than the amount asserted in the instant motion. The
21 Court relies on the amount stipulated to in the release agreement provided by both
parties. ECF Nos. 22-2 at 20, 24-1 at 14.

1 dismiss the case with prejudice. ECF No. 19. The Court granted the motion and
2 entered judgment on September 13. ECF Nos. 20, 21.

3 Between early August through late September 2021, counsel for Plaintiffs
4 inquired about the status of the settlement checks multiple times. ECF No. 22-1 at
5 4–7. Plaintiffs argue that Defendants raised “[m]ultiple new issues . . . for the first
6 time[,]” and re-raised a Medicare issue regarding a conditional payment demand.
7 ECF No. 22-1 at 6. Defendants counter that Plaintiffs “did not produce all
8 documents between themselves and Medicare” or “a copy of the check showing
9 satisfaction of Medicare’s final conditional payment demand.” ECF No. 24 at 3. On
10 September 22, 2021, Plaintiffs received the settlement checks, 25 days after the
11 August 28, 2021 deadline triggered by the execution of the release on August 7,
12 2021.² ECF No. 22-1 at 7; *see also* ECF No. 22-2 at 15.

13 On October 8, 2021, Plaintiffs filed the instant motion to enforce judgment
14 and impose sanctions for the late payment of settlement funds. ECF No. 22.
15 Plaintiffs argue that they are entitled to \$9,764.00 in interest for the late payment,
16 \$2,542.70 in attorney’s fees, \$443.58 in paralegal fees, and post-judgment interest.
17 *Id.* at 11.

18 _____
19 ² Plaintiffs argue that the settlement checks were due on August 13, 2021, exactly
20 three weeks after July 23, 2021, when Defendants agreed to provide a prospective
21 release form. ECF No. 22 at 2; *see also* ECF No. 22-2 at 15 (setting the
prospective release deadline).

II. JURISDICTION

2 Federal courts “have ancillary jurisdiction to enforce a settlement agreement
3 only ‘if the parties’ obligation to comply with the terms of the settlement agreement
4 ha[s] been made part of the order of dismissal.”” *K.C. ex rel. Erica C. v. Torlakson*,
5 762 F.3d 963 (9th Cir. 2014) (quoting *Kokkonen v. Guardian Life Ins. Co. of Am.*,
6 511 U.S. 375, 381, 114 S. Ct. 1673, 128 L. Ed. 2d 391 (1994)). For example, an
7 order of dismissal may incorporate a provision to retain jurisdiction over the
8 settlement agreement or incorporate the terms of the settlement agreement in the
9 order. *Id.* A district court retains even broader ancillary jurisdiction over a dispute
10 for attorney’s fees that, unlike the court’s jurisdiction to enforce a settlement
11 agreement, need not be “explicitly ‘retained.’” *Id.* at 970.

12 Here, the Court’s Order of Dismissal stated that the Court would retain
13 jurisdiction “to enforce the settlement agreement reached between the parties”
14 should such a need arise. ECF No. 20 at 2. Accordingly, the Court has ancillary
15 jurisdiction to enforce the terms of the settlement agreement and to rule on the
16 parties’ dispute regarding prejudgment interest and attorney’s fees.

III. LEGAL STANDARD

18 “The construction and enforcement of settlement agreements are governed by
19 principles of local [state] law which apply to interpretation of contracts generally.”
20 *Jeff D. v. Andrus*, 899 F.2d 753, 759 (9th Cir. 1989). Moreover, in federal diversity

1 actions, “[s]tate law generally governs awards of prejudgment interest.” *Oak Harbor*
2 *Freight Lines, Inc. v. Sears Roebuck, & Co.*, 513 F.3d 949, 961 (9th Cir. 2008).
3 Under Washington law, prejudgment interest is allowable when (1) “an amount
4 claimed is ‘liquidated’” or (2) “the amount of an ‘unliquidated’ claim is for an amount
5 due upon a specific contract for the payment of money and the amount due is” readily
6 determinable based on “a fixed standard contained in the contract, without reliance on
7 opinion or discretion.” *Prier v. Refrigeration Eng’g Co.*, 74 Wash. 2d 25, 32 (1968).

8 A liquidated sum includes “a specific sum of money named in and covenanted
9 to be paid by an express contract, where the liability to pay the principal sum is
10 undisputed.” *Id.* at 32–33. In contrast, damages based on expert testimony that
11 provides only estimates as to the authorized hours for in-home care payments, thereby
12 failing to indicate “the exact amount of damage. . . . are neither liquidated nor
13 ascertainable” and “prejudgment interest is unavailable.” *Rekhter v. State, Dep’t of*
14 *Social and Health Servs.*, 180 Wash. 2d 102, 125 (2014). Absent a different rate
15 agreed upon in writing, prejudgment interest is set at a rate of twelve percent per
16 annum. RCW 19.52.010(1).

17 Separately, federal district courts have inherent authority to sanction conduct
18 that abuses the judicial process. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43–46, 111
19 S. Ct. 2123, 115 L. Ed. 2d 27 (1991). Such power “must be exercised with restraint
20 and discretion.” *Id.* at 44. Sanctions may be ordered under a court’s inherent power
21 “if the court specifically finds bad faith or conduct tantamount to bad faith. Sanctions

1 are available for a variety of types of willful actions, including recklessness when
 2 combined with an additional factor such as frivolousness, harassment, or an improper
 3 purpose.” *B.K.B. v. Maui Police Dep’t*, 276 F.3d 1091, 1108 (9th Cir. 2002) (quoting
 4 *Fink v. Gomez*, 239 F.3d 989, 994 (9th Cir. 2001)).

5 **IV. DISCUSSION**

6 A. Prejudgment Interest

7 Plaintiffs argue that they are entitled to prejudgment interest in the amount of
 8 \$9,764.00 based on their calculation that Defendants paid the settlement checks 40
 9 days later than the August 13, 2021 deadline set forth in the settlement agreement.
 10 ECF No. 22 at 5–6. Defendants counter that the agreement provided for funds to be
 11 provided by August 28, 2021, three weeks after the release was executed on August
 12 7. ECF No. 23 at 4 (citing ECF No. 24-1 at 11).

13 The principle behind prejudgment interest awards is that a party “who retains money
 14 which he ought to pay to another should be charged interest upon it.” *Prier*, 74
 15 Wash. 2d at 34. Prejudgment interest is unavailable where the damages are
 16 “unquantifiable and unforeseeable” because the “defendant cannot stop the running
 17 of interest by paying the plaintiff if that defendant does not know the amount due.”
 18 *Rekhter*, 180 Wash. 2d at 125.

19 *1. Availability of Prejudgment Interest*

20 The Court first considers whether Plaintiffs’ damages are readily ascertainable
 21 for purposes of awarding prejudgment interest. The settlement terms expressly

1 stated that Plaintiffs were owed \$689,279.05 and \$50,000.00 for a combined total of
2 \$739,279.05. ECF No. 22-2 at 20. Defendants concede that the parties executed the
3 release on August 7, 2021, setting a three-week deadline for payment by August 28,
4 2021, per the terms of the parties' settlement agreement. ECF Nos. 23 at 3–4; 22-2
5 at 15. Moreover, Defendants do not dispute their liability for the car accident that
6 initiated this lawsuit. ECF No. 23 at 2. The payment of \$739,279.05 by August 28,
7 2021, is the kind of specific, liquidated sum that is readily determinable for purposes
8 of awarding prejudgment interest. *See Prier*, 74 Wash. 2d at 32.

9 Defendants do not dispute that the amount owed was readily determinable
10 under the terms of the release. Instead, they argue that prejudgment interest as a
11 form of sanction is not appropriate because both parties created a "parade of delays
12 that extend the date settlement funds were paid." ECF No. 23 at 7 (internal
13 quotation marks omitted). The Court finds this argument unpersuasive for several
14 reasons. First, Defendants suggest that Plaintiffs contributed to the delay in this case
15 by making "numerous" and "substantive changes to the Medicare provisions" of the
16 proposed release agreement. ECF No. 24 at 2; *cf.* ECF No. 23 at 3–4. However,
17 Defendants gloss over the fact that they provided the prospective release agreement
18 six days later than provided by the settlement terms and only after Plaintiffs' counsel
19 sent multiple follow-up emails. *See* ECF No. 23 at 3; *cf.* ECF No. 22-2 at 15.

20 Next, Defendants argue that prejudgment interest is inappropriate because
21 Plaintiffs also breached the release agreement by failing to provide certain

1 documents related to Medicare. ECF No. 23 at 8. Defendants' assertion, without
2 any specific citation to the record to show that Plaintiffs failed to provide certain
3 documents at any given point, is unavailing. Plaintiffs, in contrast, persuasively
4 counter that the release agreement required Plaintiffs to produce documents and
5 perform various acts as "reasonably request[ed]" by Defendants. ECF No. 24 at 2
6 (citing ECF No. 22-2 at 23). The record does not support that Plaintiffs failed to
7 produce any requested documents. Rather, the record reflects that Defendants
8 requested communication from Medicare regarding satisfaction of its lien and
9 Plaintiffs provided a Medicare letter "acknowledging payment in full and a zero
10 balance" the very next day. ECF No. 22-2 at 37; *see also id.* at 36. The record also
11 reflects that Plaintiffs' counsel reached out numerous times to see if Defendants
12 needed anything else, both for the prospective release and the settlement payment.
13 ECF No. 22-2 at 26, 31, 43, 46, 51.

14 Lastly, Defendants argue that sanctions are unavailable because Plaintiffs
15 "have not shown that Defendants' actions were reckless, frivolous, or intended to
16 harass." ECF No. 23 at 9. Defendants do not cite any authority suggesting that a
17 "bad faith" standard or "recklessness" standard, both of which may be relevant for
18 purposes of attorney's fees, apply to an award of prejudgment interest. By
19 Defendants' own admission, the settlement money was due by August 28, 2021, but
20 was not paid until late September. ECF No. 23 at 4–5. In light of the record before
21 the Court, Defendants' characterization of the dispute as a "failure to cooperate"

1 between both parties is inaccurate. *Id.* at 7. Accordingly, the Court finds that
2 Plaintiffs are entitled to prejudgment interest.

3 2. *Calculation of Prejudgment Interest*

4 Plaintiffs assert that the settlement money was due by August 13, 2021, and
5 the 40-day late payment on September 22, 2021, results in \$9,764.00 owed in
6 interest. ECF No. 22 at 6 (calculating interest by multiplying a settlement total of
7 \$742,841.48 by the Washington standard interest rate of 12% for a total of
8 \$89,097.78 in interest annually or \$244.10 in interest per day; multiplying 40 days
9 by \$244.10 for a total of \$9,764.00). There are several issues with Plaintiffs'
10 calculations.

11 First, Plaintiffs miscalculate the settlement total based on an error in the
12 amount of money owed to Pierre Bustanoby. *Compare* ECF No. 22-1 at 4 (listing
13 the amount owed to Mr. Bustanoby as \$692,841.48) *with* ECF No. 22-2 at 20 (listing
14 the amount owed to Mr. Bustanoby as \$689,279.05). Adding the two sums for Mr.
15 Bustanoby and Jennifer Hopkins results in a total settlement amount of \$739,279.05
16 for Plaintiffs. ECF No. 22-2 at 20. Multiplying this amount by the 12% interest rate
17 provided under RCW 19.52.020(1) results in \$88,713.49 owed in interest annually
18 or \$243.05 per day.

19 Next, the Court rejects the 40-day total calculated by Plaintiffs for purposes of
20 awarding prejudgment interest. Plaintiffs assert that "settlement funds were due to
21 be paid on or before August 13, 2021." ECF No. 22 at 2. This assumption is based

1 on the assertion, without any citation to legal authority or the terms of the contracted
2 settlement terms, that the August 28, 2021 deadline “was artificially increased by
3 Defendants unilaterally breaching the CR2A Agreement in failing to provide the
4 release by Friday, July, 23, 2021.” ECF No. 22-1 at 3.

5 The settlement provided that payment was owed within three weeks of the
6 execution of the release agreement, which occurred on August 7, 2021. ECF Nos.
7 22-2 at 15, 45, 24-1 at 25. The delay attributable to Defendants in preparing the
8 prospective release, while possibly frustrating, does not change the fact that the
9 release was signed on August 7, 2021, triggering a payment deadline of August 28,
10 2021. Plaintiffs did not receive the payment until September 22, 2021, a delay of 25
11 days. ECF No. 22-1 at 7; *see also* ECF No. 25 at 2.

12 To summarize, the Court finds that the settlement amount of \$739,279.05,
13 based on the release agreement at ECF No. 22-2 at 20, is a sum certain because no
14 discretion is needed to calculate this amount. Accordingly, the settlement amount is
15 liquidated and subject to an award of prejudgment interest. The Court applies the
16 Washington statutory rate of 12% interest in the absence of the parties’ agreement to
17 the contrary. RCW 19.52.010(1). These calculations result in \$88,713.49 in interest
18 annually or \$243.05 per day. Multiplying the daily interest total by the 25-day delay
19 that occurred in the instant case results in a prejudgment interest total of \$6,076.25.

20 / / /

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1 B. Attorney's Fees

2 Plaintiffs next argue that they are entitled to attorney's fees to enforce the
 3 settlement agreement based on the Court's inherent power, 28 U.S.C. § 1927, and 35
 4 U.S.C. § 285. ECF No. 22 at 6. The Court notes that attorney's fees under 35
 5 U.S.C. § 285, which is reserved as a remedy in patent infringement cases, does not
 6 apply to this case. The Court considers Plaintiffs' two remaining sources of
 7 authority for ordering attorney's fees.

8 1. *Inherent Power: Bad Faith Conduct*

9 Relying on their inherent power, courts "may assess attorney's fees when a
 10 party has 'acted in bad faith, vexatiously, wantonly, or for oppressive reasons.'" *Chambers*, 501 U.S. at 45–46 (quoting *Alyeska Pipeline Serv. Co. v. Wilderness Society*, 421 U.S. 240, 258–59, 95 S. Ct. 1612, 44 L. Ed. 2d 141 (1975)) (internal
 11 quotation marks and citation omitted). Under this same inherent power, sanctions
 12 are available for certain categories "of willful actions, including recklessness when
 13 combined with an additional factor such as frivolousness, harassment, or an
 14 improper purpose." *Fink*, 239 F.3d at 994. Nevertheless, "[b]ecause of their
 15 potency, inherent powers must be exercised with restraint and discretion." *Id.* at 44.
 16 Evidence of ignorance or negligence, alone, does not compel a finding of
 17 recklessness or bad faith. *Barber v. Miller*, 146 F.3d 707, 711 (9th Cir. 1998).

20 In this case, the 25-day delay in providing the agreed upon settlement money
 21 does not rise to the level of willful bad faith or reckless frivolity for purposes of

1 ordering attorney's fees under the Court's inherent authority. The Court recognizes
2 that there were delays and gaps in communication in the final stages of this case, but
3 the record also shows evidence that some delays were caused by the conduct of
4 Defendants' insurer. *See, e.g.*, ECF Nos. 22-2 at 26–27 (Plaintiffs' counsel twice
5 inquires about the status of the release agreement before Defense counsel responds
6 and ultimately sends the release six days late); *but see id.* at 53 (Defense counsel
7 notes "I am trying to get an answer from the insurer"); *id.* at 59–60 (Defense counsel
8 discusses plans to "address the insurer's issues and alleviate a motion to enforce
9 settlement); and *id.* at 64 (providing the tracking number and estimated arrival for
10 the settlement checks).

11 The approximate one-month delay in the final settlement phase of this case
12 may have created frustration, but it does not rise to a level of willful bad faith or
13 heightened recklessness on behalf of Defendants or Defense counsel. Accordingly,
14 the Court declines to exercise its inherent authority to impose attorney's fees for the
15 instant motion.

16 2. 28 U.S.C. § 1927: *Liability for Excessive Costs*

17 Alternatively, Plaintiffs argues that the Court should impose sanctions
18 pursuant to 28 U.S.C. § 1927. ECF No. 22 at 9. The statute provides the following:

19 Any attorney or other person admitted to conduct cases in
20 any court of the United States or any Territory thereof who
21 so multiplies the proceedings in any case unreasonably
and vexatiously may be required by the court to satisfy

1 personally the excess costs, expenses, and attorneys' fees
2 reasonably incurred because of such conduct.

3 28 U.S.C. § 1927. Similar to the standard that the Court uses to determine whether
4 to impose sanctions using its inherent authority, [a]n award of sanctions under 28
5 U.S.C. § 1927 . . . requires a finding of recklessness or bad faith." *Barber*, 146 F.3d
6 at 711. Moreover, the statutory language regarding the multiplication of
7 proceedings "applies only to unnecessary filings and tactics once a lawsuit has
8 begun." *In re Keegan Mgmt. Co., Sec. Litig.*, 78 F.3d 431, 435 (9th Cir. 1996).

9 For the same reasons discussed above, the Court finds that Defendants'
10 conduct does not rise to the level of recklessness or bad faith necessary for imposing
11 attorney's fees under 28 U.S.C. § 1927.

12 Accordingly, **IT IS HEREBY ORDERED:**

13 1. Plaintiff's Motion to Enforce Judgment and Issue Sanctions, ECF No.
14 **22, is GRANTED IN PART AND DENIED IN PART.**

15 a. Plaintiffs are awarded **\$6,076.25** in prejudgment interest, payable
16 by Defendants Preserver Trans LLC and Rehman Hayat, jointly
17 and severally.

18 b. Upon entry of this final judgment, interest will accrue on
19 Defendants' total unpaid balance at the statutory rate for federal
20 judgments according to 28 U.S.C. § 1961 (1.135% based on the
21 weekly average of February 22, 2022 – February 25, 2022).

2. Plaintiffs' request for attorney's fees and paralegal fees is

DENIED.

IT IS SO ORDERED. The District Court Clerk is directed to enter this Order, enter final judgment for Plaintiffs regarding prejudgment and post-judgment interest, provide copies to counsel, and close this case.

DATED March 4, 2022.

s/ Rosanna Malouf Peterson
ROSANNA MALOUF PETERSON
Senior United States District Judge